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6 UNITED STATES BANKRUPTCY COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 In re

9 KRISTINE ANN LaHAYE,

No. 03-10068

10 Debtor(s).  
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12 Memorandum re Disability Homestead Exemption and Motion to Avoid Lien  
13 \_\_\_\_\_

13 I. Introduction

14 The debtor purchased her real property at 5 Council Crest Drive in Corte Madera in 1990.  
15 Shortly after she married her non-debtor husband in 2001, she transferred title to the property to the both  
16 of them as joint tenants. After she filed her Chapter 7 petition, the bankruptcy trustee avoided the  
17 transfer of a half interest in the property to her husband and is now a one-half owner of the property.

18 The debtor claimed an exemption of \$125,000.00 in the real property, and moved to avoid the  
19 judgment lien of creditor Patrick Caballero. Her motion is contested by Caballero, who has also  
20 objected to the exemption.

21 II. Issues

22 Resolution of these disputes involves two legal issues. First, the court must decide who bears  
23 the burden of proof as to a disability homestead exemption under California law. Second, the court must  
24 decide if there is merit to Caballero's assertions that half of whatever exemption is allowed is attributed  
25 to the husband's avoided half ownership.  
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1 III. Disability Exemption

2 LaHaye has claimed the \$125,000 exemption provided by California Code of Civil Procedure §  
3 704.730(a)(3)(B) for "[a] person physically or mentally disabled and as a result of that disability is  
4 unable to engage in substantial gainful employment." The term "substantial gainful employment" is the  
5 same term used in federal social security law. Federal rules define the term as the ability to earn at least  
6 \$700 per month, plus a modest adjustment for wage increases since 2001. 20 CFR § 404.1574.

7 The evidence before the court establishes that LaHaye has a chronic back condition and is not  
8 now employed but is contradictory as to whether she is unable to engage in substantial gainful  
9 employment. Since the court is unable to make a clear determination on the evidence, resolution of the  
10 issue depends on which party bears the burden of proof. While Caballero argues that this burden lies  
11 with the debtor, it appears that he bears the burden. FRBP 4003(c); *In re Rostler*, 169 B.R. 408, 411  
12 (Bankr.C.D.Cal. 1994). Accordingly, the exemption must be allowed.

13 IV. Reduction of Exemption by Half

14 Without citing any case authority,<sup>1</sup> Caballero asks the court to reduce LaHaye's exemption by  
15 half, attributing half to her husband's avoided interest. This argument seems contrary to both the law and  
16 the policy of homestead exemptions.

17 Homestead laws are intended to preserve the stability of society by protecting the home-owning  
18 middle class. The exemption amounts are the amounts determined by the state legislature as necessary  
19 for a debtor to purchase a new home if excess equity has resulted in the execution sale of his existing  
20 home. Reducing the homestead by half means that a debtor would have only half the funds necessary to  
21 purchase a new home.

22 Caballero's argument is that LaHaye had a single homestead on the entire fee, so that when the  
23 trustee acquired half the property half of LaHaye's exemption went with it. This is not a correct

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25 <sup>1</sup>The sole case cited by Caballero, *In re Talmadge*, 832 F.2d 1120 (9<sup>th</sup> Cir.1987), holds only that  
26 a married couple cannot double their homestead exemptions. It is not precedent for cutting an allowed  
exemption in half.

1 statement of California law. The debtor owned only a half interest in the property when she filed her  
2 bankruptcy petition. See *In re Summers*, 332 F.3d 1240 (9<sup>th</sup> Cir. 2003). She is entitled to a full  
3 exemption on her interest.

4 While state homestead law and federal exemption law do not exactly dovetail, bankruptcy issues  
5 are generally decided as if there was an execution sale under state law. *In re Cole*, 93 B.R. 707, 709  
6 (9<sup>th</sup> Cir. BAP 1988). California Code of Civil Procedure § 704.800(a) provides that there can be no  
7 execution sale unless the sale price is sufficient to cover the homestead exemption plus the  
8 encumbrances. An execution sale where the debtor receives only half of the exemption is not possible.  
9 The proper rule is that the debtor is entitled to claim her homestead in whatever portion of her property  
10 remains at the time of execution sale.

11 The court is also unconvinced by Caballero's attempt to reduce LaHaye's exemption as a  
12 punitive measure for having deeded half of her property to her husband. Except in rare instances where  
13 stolen money is used to purchase a homestead, the amount of the exemption is not reduced due to the  
14 debtor's conduct or the nature of the debt. In fact, § 523(c) of the Bankruptcy Code protects exempt  
15 property from the kind of nondischargeable debt Caballero alleges to hold against LaHaye.

#### 16 V. Conclusion

17 The debtor had \$132,000.00 in equity in her home when she filed her bankruptcy petition. She is  
18 entitled to an exemption of \$125,000.00. The Caballero judgment lien therefore impairs her exemption  
19 to the extent it exceeds \$7,000.00.

#### 20 VI. Orders

21 Counsel for LaHaye shall submit an order overruling Caballero's objection to her claim of  
22 exemption and a separate order granting her motion to avoid his judgment lien except to the extent of  
23 \$7,000.00.

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25 Dated: September 10, 2003

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Alan Jaroslovsky  
U.S. Bankruptcy Judge

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